

REMARKS/ARGUMENTS

Claims 1-4, 7-33 and 36-39 are pending in this application. Claim 40 is cancelled without prejudice or disclaimer. Applicant acknowledges the Examiner's finding that claims 1-4, 7-33 and 36-39 are allowable. Therefore, the present application is in condition for allowance.

An Information Disclosure Statement (IDS) was filed on October 13, 2004 prior to the mailing of the present Office Action. Applicant requests return of an initialled copy of the Form PTO-1449 in confirmation that the listed reference was considered by the Examiner.

The Examiner has noted that nucleotides 73-4655 of SEQ ID NO:2 are 100% identical to SEQ ID NO:20 of Vierling, Jr., US 6,586,583 (the '583 patent) and may support interference proceedings involving the '583 patent and the present application. In response, Applicant repeats his previous comments.

1) Review of the '583 patent and related patents (US 5,866,695 and US 5,840,558) issuing from earlier filed parent applications reveals that SEQ ID NO:20, cited by Examiner, was first disclosed in the '583 patent. This nucleotide sequence was not disclosed in the earlier filed applications as only SEQ ID NOS:1-19 were present in US 5,866,695, and SEQ ID NOS:1-17 were present in US 5,840,558.

2) The '583 patent was filed on December 9, 1998 which is the effective filing date of Vierling's claims directed to SEQ ID NO:20.

3) The present application, disclosing SEQ ID NO:2, was filed on September 29, 1997 which is more than one year prior to the filing date of the '583 patent.

4) The sequence information contained in SEQ ID NO:2 was disclosed by Applicant in November 1997 in *The Plant Journal* (vol 12, pp. 9991-9998; copy previously provided), the NCBI database under accession number AF014502 (copy previously provided), and the Medline database under reference number 98079236 (or the PubMed database under reference number

9418041; copy previously provided) which establish that SEQ ID NO:2 was publicly known more than one year prior to the filing date of the '583 patent.

5) The *Plant Journal* paper is cited on the front page of the '583 patent.

6) An interference should have been declared while the '583 patent was co-pending with the present application in the U.S. Patent and Trademark Office.

In accordance with 37 CFR § 1.607, Applicant requested on June 17, 2004 that an interference be declared between the '583 patent and the present application. The proposed count is (i) claim 7 of the '583 patent or (ii) claim 2 of the present application. The claims are presented less than one year from the issue date of the '583 patent (i.e., July 1, 2003).

Since Vierling's claims (including claim 7) recite SEQ ID NO:20 as a limitation, the effective filing date of the '583 patent is December 9, 1998. The effective date of the present application is September 29, 1997. Therefore, Applicant should be named the senior party in the interference.

It is respectfully submitted that the above-identified application is now in a condition for allowance, therefore favourable reconsideration and prompt allowance of these claims are respectfully requested. Should the Examiner believe that anything further is desirable in order to place the application in better condition for allowance, the Examiner is invited to contact Applicant's undersigned attorney at the telephone number listed below.

Respectfully submitted

By


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